

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

IN RE:)	
SUSAN ALLEN,)	Case No. 13-61303
)	
Debtor,)	
)	
SUSAN ALLEN,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. _____
)	
UNITED STATES DEPARTMENT)	
OF EDUCATION,)	
)	
and)	
)	
MOHELA,)	
)	
Defendants.)	

COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOAN DEBT

COMES NOW Debtor/Plaintiff, Susan Allen, by and through her counsel and for her cause of action to determine dischargeability of student loan indebtedness pursuant to 11 U.S.C. § 523(a)(8) and against the United States Department of Education and MOHELA states as follows:

IDENTIFICATION OF THE PARTIES

1. That Debtor/Plaintiff, Susan Allen (hereinafter "Plaintiff"), filed a Voluntary Petition for relief under Chapter 7 of Title 11 of the United States Bankruptcy Code on August 19, 2013, Bankruptcy Case No. 13-61303, now pending in this Court.

2. That Defendant United States Department of Education ("USDOE") is a creditor of this estate pursuant to the student loan debt in Plaintiff's Schedule F.

3. That Defendant MOHELA is the servicer of the student loan debt listed in Plaintiff's Schedule F.

4. That Defendant USDOE may be served pursuant to Rule 7004 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2002-2 by mailing copy of the Summons and Complaint to the Department of Education, Office of General Counsel, Division of Post-Secondary Education, 400 Maryland Ave. SW, Room 6E118, Washington, D.C. 20202-2110; Department of Education, Office of General Counsel, Division of Post-Secondary Education, Region IX, 50 United Nations Plaza, Room 242, San Francisco, CA 94102-4987; Department of Education, ACS-DSL, 501 Bleecker Street, East, Utica, NY 13501; U.S. Attorney, Room 5510 U.S. Courthouse, 400 E. 9th Street, Kansas City, Missouri 64106, Attn: Bankruptcy Processing Clerk; Attorney General, Main Justice Building, 950 Pennsylvania Ave., NW, Room 5111, Washington, DC 20530.

5. That Defendant MOHELA may be served pursuant to Rule 7004 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2002-2 by mailing a copy of the Summons and Complaint to MOHELA, 633 Spirit Drive, Chesterfield, Missouri 63005-1243.

JURISDICTION

6. That this Court has jurisdiction over the subject matter of this Complaint as it is a core proceeding pursuant to the provision of 28 U.S.C. §§ 1334 and 157(b)(2)(I).

7. That this Complaint is to determine the dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(8).

8. That Plaintiff consents to a final judgment.

FACTS

9. That Plaintiff filed a Voluntary Petition for relief under Chapter 7 of Title 11 of the United States Bankruptcy Code on August 19, 2013. Fred Charles Moon was appointed Trustee. This is a no-asset case. The Plaintiff and Trustee anticipate no distribution.

10. That Plaintiff scheduled in Schedule F a student loan debt ("Student Loan") that was made, insured, or guaranteed by a governmental unit. The Student Loan was made in 1983 in the original principal amount of \$2,300.00. The current Student Loan total is approximately \$2,518.05.

11. That, pursuant to 11 U.S.C. 523(8), student loans are generally excepted from discharge unless excepting such debt from discharge would impose an undue hardship on the debtor and the debtor's dependents.

12. That the Plaintiff has been determined to be disabled by the Social Security Administration. The nature of Plaintiff's disability is chronic and is not expected to change.

13. That the Plaintiff's monthly household income as set forth on Schedule I is \$1,221.00, which comes solely from Social Security.

14. That the Plaintiff's monthly household expenses as set forth on Schedule J is \$1,201.18, which does not include any payments for the Student Loan.

15. That Plaintiff's monthly household expenses are expected to increase due to Plaintiff's chronic health issues.

16. That Plaintiff lacks the current resources to make the Student Loan payment. If Plaintiff's household resources were used to meet the Student Loan obligation, necessary living expenses would be diverted from her household to the detriment of Plaintiff.

17. That the nature of the Plaintiff's disability prevents her from engaging in any type of regular employment from which she can supplement her current income to satisfy her Student Loan indebtedness.

18. That Plaintiff lacks sufficient assets which may be liquidated to satisfy the Student Loan indebtedness.

19. That Plaintiff made payments on the Student Loan indebtedness prior to her disability, while she was employed. The Plaintiff is not employable.

20. That requiring the Plaintiff to transfer her student loan to a different repayment plan would be a pointless exercise since it would likely not result in any repayment.

REQUESTED RELIEF

21. That repayment of the Plaintiff's Student Loan obligation would create an undue hardship upon the Plaintiff and therefore should not be excepted from discharge pursuant to 11 U.S.C. § 523(a)(8)(A)(i).

WHEREFORE, Plaintiff prays to this Court for a judgment determining that the Student Loan set forth on Schedule F is dischargeable, and for such other relief as the Court determines appropriate. The Plaintiff consents to a final judgment.

Respectfully submitted,

ROONEY MCBRIDE & SMITH, L.L.C.

By: /s/Scott A. Smith
Scott A. Smith
Missouri Bar Number 56752

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by electronic notice or by United States Mail, First Class postage prepaid, this 12th day of November, 2013, to:

Department of Education
Office of General Counsel
Division of Post-Secondary Education
400 Maryland Ave. SW, Room 6E118
Washington, D.C. 20202-2110

Department of Education
Office of General Counsel
Division of Post-Secondary Education, Region IX
50 United Nations Plaza, Room 242,
San Francisco, CA 94102-4987

Department of Education
ACS-DSL
501 Bleecker Street
East, Utica, NY 13501

U.S. Attorney
Room 5510 U.S. Courthouse
400 E. 9th Street, Kansas City, Missouri 64106

Attn: Bankruptcy Processing Clerk
Attorney General
Main Justice Building
950 Pennsylvania Ave., NW, Room 5111
Washington, DC 20530

MOHELA
633 Spirit Drive
Chesterfield, Missouri 63005-1243

Fred C. Moon
Moon & Moon, Attorneys at Law, P.C.
1441 E. Primrose St.
Springfield, MO 65804
Chapter 7 Trustee

Jerry L. Phillips
Office of the United States Trustee
400 E. 9th Street, Room 3440
Kansas City, Missouri 64106

By: /s/Scott A. Smith
Scott A. Smith
Missouri Bar Number 56752

VERIFICATION PAGE

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and)	
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Defendants.)	

SUSAN ALLEN, being of lawful age and being first duly sworn upon her oath, states that the facts stated above are true and accurate according to her best information, knowledge, and belief and that she executed this Affidavit as her own free act and deed.

Susan J. Allen
SUSAN ALLEN

Subscribed and sworn to before me this 12th day of November, 2013.

Amanda Hays
Notary Public
My Commission Expires:

